

Remixing the digital future

Here's a 10-point blueprint for transitioning from the analog to digital world. From Chapter 14 of "Darknet: Hollywood's War Against the Digital Generation," by JD Lasica.

J.D. Lasica's book explores the future of movies, computing, television, music, and games—and the choices facing us as a society as we transition into the digital age. The following is an excerpt from [Darknet: Hollywood's War Against the Digital Generation](#).

As the digital media revolution seeps into every aspect of our lives, I think it's inevitable that participatory culture will prevail in the long run. But the short run is a different story. I don't share Lawrence Lessig's famous pessimism, which earned him the sobriquet "the dean of darkness," but as one

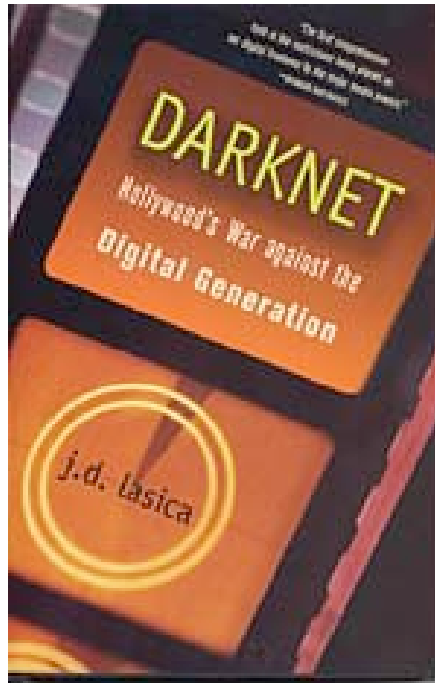
looks out over the prospects for digital freedoms in today's public policy arena, it's hard to be optimistic.

Regulators are considering giving media companies the power to reach into users' homes and restrict what they can do with works they have paid for. The MPAA has successfully lobbied at least seven state legislatures to pass sweeping new DMCA-like laws that criminalize the use of "unauthorized" home entertainment equipment. You might be breaking the law by hooking up a PVR, VCR, PC, modem, or webcam without obtaining the permission of your cable or satellite operator, ISP, or phone carrier.

Some legislators have gone off the deep end. Sen. Orrin Hatch, the Utah Republican who chairs the Senate Judiciary Committee, said during a hearing in 2003 that all future computers should be required to include "kill switches" that could be activated remotely to thwart peer-to-peer piracy. He said he was drafting legislation under which a copyright holder would give an offender two warnings before activating the kill switch to destroy or disable the violator's computer. "Requiring kill switches is an extreme step, but if the private sector can't stop piracy on its own, the government will," he said.

In response, a growing number of public-spirited organizations have begun a broad-based movement on behalf of digital culture. In April 2004, students at Swarthmore College founded Freeculture.org, an international student campaign to preserve digital liberties. Other groups that have joined the digital rights wars include Public Knowledge, the EFF, Consumers Union, the American Library Association, the Center for Democracy and Technology, DigitalConsumer.org, the Alliance for Digital Progress, Protectfairuse.org, the Home Recording Rights Coalition, Media Access Project, the Digital Speech Project, Anti-DMCA.org, New Yorkers for Fair Use, and Britain's Campaign for Digital Rights, among many others.

In some ways, the grassroots efforts resemble the fledgling protest movements of the early 1960s. James Boyle, a Duke law professor, has likened the issues surrounding digital rights and intellectual property to those of the environmental movement before the first Earth Day.



Just as environmentalists span the political spectrum, so do supporters of digital culture. On his Instapundit weblog, conservative blogger Glenn Reynolds assessed Congress's sidling up to Big Media interests this way: "These legislative initiatives aren't just about copyright. They're about building a regime that's hostile to content that comes from anyone other than Big Media suppliers."

A spirited public debate on issues of personal media, participatory culture, and intellectual property in the new era is long overdue. With that in mind, I'll offer this ten-point digital culture road map:

1. We are users as well as consumers.

Once we begin to think of people as creators, producers, designers, and users of media rather than as strictly passive consumers, the entire basis of the conversation changes. As users and stakeholders, citizens should have a seat at the table in efforts to restore the centuries-old balancing act between copyright holders and the public. Users are entitled to have their voices heard in the corridors of power alongside Hollywood's gleaming lobbying machine.

2. Artists must be compensated for their works.

All sides should recognize that artists, musicians, authors, songwriters, and other creative people should be paid for commercial uses of their works. As Time magazine put it, "After all, you can't have an information economy in which all information is free." We should remember that what most users want is not free use but fair use and the right to participate in our culture.

3. The public's digital rights should be affirmed.

Most people believe they have a “fair use right” to use, borrow, and transform cultural works in their daily lives. The law should be changed to reflect those cultural norms. Congress should specify users’ digital rights by mapping out an expansive, affirmative set of rules delineating the scope of the public’s right to sample, re-use, build upon, and share the digital works they legally acquire. Such a declaration, with reasonable protections for copyright holders, should include the right to time-shift, space-shift, make personal backup copies, change formats, tinker with stuff you buy, engage in personal editing, and share personal media with others, depending on the circumstances.

4. The DMCA requires a dramatic overhaul.

A suburban Boston pastor incorporates Hollywood images into his sermons. An Intel vice president adds a few seconds of a Hollywood film to a home-made video. Users bypass Hol-

lywood’s region code to play an imported movie.¹⁰ Others bypass digital locks to play a DVD on a Linux computer. A scientist discovers a security flaw in a major corporation’s encryption system and wants to share his findings with colleagues. The Digital Millennium Copyright Act outlaws all these legitimate activities—none of which has anything to do with file sharing or piracy.

The DMCA chills entrepreneurial innovation, repeals citizens’ fair use rights, turns digital devices into black boxes off-limits even to their owners, and relegates Webcasters to second-class status. Those provisions should be repealed.

5. Celebrate participatory culture. Don’t outlaw it.

The past few years have seen the most remarkable flourishing of participatory culture in history. We should do everything in our power to foster its growth. In the new era, users sample, remix, mash up, reinvent, and share digital media, drawing from the culture at large in transforming the bor-

rowed material into something new. The law should recognize and legitimize these new forms of digital usage and creativity. Congress should enact new compulsory licenses that permit commercial remixing and sampling of prior works—music, movies, television, games, and art—for a reasonable fixed fee. Personal, noncommercial uses such as home movies, political commentaries, or artistic statements should be permitted for free.

6. The Darknet is the public’s great equalizing force.

Some have suggested organizing a mass protest march on Washington to redress the balance of power. I believe a better course is simply to pick up the tools of digital media. When millions more people begin ripping and remixing their culture, the inequities of current law will become plain. In many cases, users will flock to the Darknet to route around copy controls and unbalanced laws. In this way, the Darknet might well serve as the public’s great equalizer—a counterbalancing force and bulwark to defend digital liberties. The Darknet will

grow in scope, resilience, and effectiveness in direct proportion to digital restrictions the public finds untenable.

7. The Internet is not an entertainment medium.

The Internet is not a delivery system for digital entertainment. It's not a set of pipes or wires. It's a network of networks with a default architecture of participation. On his LawMeme weblog, James Grimmelmenn wrote: "Trying to force the Internet to be the perfect delivery system for the RIAA is like draining a Florida swamp to put up an apartment building, only to watch the building slowly sink. The swamp is the natural state of things."

Jaron Lanier, the acclaimed scientist and musician who coined the term "virtual reality," told me this: "If the Internet remains unfettered and entrepreneurs keep coming up with better ways to display compressed video and amateurs create more varied, interesting, and open material, the Net will turn into a superior competitor to Hollywood and traditional television." Any attempts to rewire

the Internet or reengineer the personal computer into an entertainment appliance are "profoundly misguided," he says.

"The Internet is the future of all communication that's not face to face."

8. To make file sharing and the Darknet irrelevant, innovate.

The way to marginalize file sharing and the Darknet is through innovative, market-based solutions—not through laws, government mandates, lawsuits, digital locks, or misleading educational campaigns. The best defense to piracy is a smart business model.

"We're in this really critical period where the panic and fear of the future can get some real mistakes hard-coded into the system," book publisher Tim O'Reilly warns. "The best way to prevent the piracy that the music and movie industries fear is to provide what people want at an affordable price."

9. Trust the marketplace.

Media companies need to learn to let go. Successful entertainment companies will create

new products and pricing schemes, embrace fair use by giving customers flexibility in choosing how they want to view or listen to a work, and give outside innovators the freedom to tinker with and improve existing products. Media companies should embrace their digital destiny, even as their business models suffer short-term dislocation. Record companies, for instance, may need to stop relying on megasales for a few top artists and learn to cultivate a variety of acts. As they always do, industries will adjust, and everyone will win. Says consultant Jim Griffin, "Every time we crave control, we lose. Every time we let go, we profit."

10. Efforts to enrich the public domain should be encouraged.

By continually extending copyright terms, Congress benefits large corporations and the distant heirs of creators, but such actions prevent tens of thousands of cultural works from ever reaching the public. Digital culture advocates have proposed returning to the copyright terms of 1976 (for instance, a fifty-year term for in-

dividuals, with a \$1 registration fee), plus other measures to enrich the public domain. The public wins if a classic work can be restored or reinterpreted without permission. Those who want to restore balance to copyright laws should support private efforts like Creative Commons that offer fair and flexible alternatives to long, restrictive copyright terms.

These are only a few ideas to get the ball rolling. We may collectively decide that, to protect entertainment interests, our devices need to be locked down while cop chips frisk everyone for unauthorized content. We may decide to welcome “a legal troll squatting at the cen-

ter of the network, demanding tolls and blocking new experiments,” as Salon managing editor Scott Rosenberg put it. But that should be an informed choice, not one made behind closed doors by political insiders and corporate interests. We need vigorous public discourse and dustups on these subjects across the land.

As the digital media revolution disintermediates power and gives people an easy outlet to sample and express and share, it can be both threatening and enervating. Over the long term, there is every reason to expect a Hollywood ending to this story. Movie studios will continue to flourish, more record

ing artists will be able to earn a livable wage, and we’ll still be watching television into our golden years. But expect the major entertainment media to look decidedly different. Amateurs and creative individuals at the grass roots will play no small part in that.

J.D. Lasica is the author of "Darknet: Hollywood's War Against the Digital Generation" (John Wiley & Sons, republished with permission). He is also the executive director and co-founder of Ourmedia.org, the global home for grassroots media. A prolific blogger (Newmediamusings), he lives on the northern tip of Silicon Valley with his wife and young son.

Here's a link to [buy the book on Amazon.com](http://buythebookonAmazon.com).